



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 90**

**[WT Docket No. 11-202; FCC 11-185]**

**Private Land Mobile Radio Service Regulations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to modify our rules to permit the implementation of foreign object debris (FOD) detection radar in the 78-81 GHz band. FOD at airports can seriously threaten the safety of airport personnel and airline passengers and can have a negative impact on airport logistics and operations. We seek comment on service and technical rules, and on whether such operations should be authorized on a licensed or unlicensed basis.

**DATES:** Submit comments on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 11-202; FCC 11-185, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Tim Maguire, Mobility Division, Wireless Telecommunications Bureau, (202) 418-2155.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking and Order ("NPRM") in WT Docket No. 11-202, FCC 11-185, adopted December 15, 2011, and released December 20, 2011. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12<sup>th</sup> Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12<sup>th</sup> Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

## **I. PROCEDURAL MATTERS**

### **A. Ex Parte Rules-Permit-but-Disclose Proceeding**

1. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other

filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

**B. Comment Dates**

2. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

### **C. Paperwork Reduction Act**

3. This NPRM may contain proposed new information collection requirements dependent on which potential licensing scheme the Commission adopts. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## II. INITIAL REGULATORY FLEXIBILITY ANALYSIS

4. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the Notice of Proposed Rule Making in WT Docket No. 11-202 (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM as provided on the first page of this document. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.<sup>1</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>2</sup>

5. The proposed rules in the NPRM are intended to permit the implementation of foreign object debris (FOD) detection radar in the 78-81 GHz band. FOD at airports can seriously threaten the safety of airport personnel and airline passengers and can have a negative impact on airport logistics and operations.

### A. Legal Basis

6. Authority for issuance of this item is contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

### B. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. Pursuant to 5 U.S.C. 603(b)(3), the RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental

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<sup>1</sup> See 5 U.S.C. 603(a).

<sup>2</sup> Id.

jurisdiction.” Id. In addition, according to 5 U.S.C. 601(3), the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA at 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency after consultation with the Office of Advocacy of the SBA, and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes proposed in this NPRM.

8. The SBA has developed a small business size standard for airport operations within the two broad economic census categories of “Air Traffic Control” and “Other Airport Operations.” See 13 CFR 121.201, NAICS codes 488111 and 488119. Under both categories, the SBA deems a business to be small if it has average annual receipts of seven million dollars or less. For the census category of Airport Operations, Census Bureau data for 2007 show that there were 1,075 firms in this category that operated for the entire year. Of this total, 899 had annual revenue of less than five million dollars, and 74 had annual revenue between five and ten million dollars. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

9. Some of the rules proposed herein may also affect small businesses that manufacture aviation radio equipment. The Commission has not developed a definition of small entities applicable to aviation radio equipment manufacturers. Therefore, the applicable definition is that for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and

wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.” The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. See 13 CFR 121.201, NAICS codes 334220. For this category of manufacturers, Census data for 2007, which supersede the similar data in the 2002 Census, show that there were 398 such establishments that operated that year. Of those 398 establishments, 393 (approximately 99%) had fewer than 1,000 employees and 912 (approximately 97%) had fewer than 500 employees. Between these two figures, the Commission estimates that about 915 establishments (approximately 97%) had fewer than 750 employees and, thus, would be considered small under the applicable SBA size standard. Accordingly, the majority of establishments in this category can be considered small under that standard.

**C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

10. The rule changes under consideration in the NPRM would require manufacturers to meet certain criteria and potential users to operate the equipment as prescribed in the rules. We believe the proposed rules would have no other significant effect on the compliance burdens of regulatees. We invite comment on our tentative conclusion that the possible rule changes will not have a negative impact on small entities, or for that matter any entities, and do not impose new compliance costs on any entity. To the extent that commenters believe that any of the above possible rule changes would impose a new reporting, recordkeeping, or compliance burden on small entities, we ask

that they describe the nature of that burden in some detail and, if possible, quantify the costs to small entities.

**D. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered**

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>3</sup>

12. We hereby invite interested parties to address any or all of these regulatory alternatives and to suggest additional alternatives to minimize any significant economic impact on small entities. Any significant alternative presented in the comments will be considered.

**E. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

13. None.

**III. ORDERING CLAUSES**

14. Pursuant to sections 1, 4(i), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(f), 303(g), and 303(r), this Notice of Proposed Rule Making IS ADOPTED.

15. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business

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<sup>3</sup> 5 U.S.C. 603(c)(1)-(4).



Administration.

16. Pursuant to sections 4(i), 302, and 303(e), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303(e), and § 1.3 of the Commission's rules, 47 CFR 1.3, the Request for Waiver filed by Trex Enterprises Corporation on November 3, 2010, IS GRANTED IN PART and DENIED IN PART to the extent set forth above. This action is effective upon release of the Order.

**List of Subjects in 47 CFR Part 90**

Communications equipment, Private land mobile, Radio.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

**Part 90 – Private Land Mobile Radio Services**

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.103 is amended by revising the table in paragraph (b) by inserting a new entry at the end of the table and by adding paragraph (c)(30) to read as follows:

**§ 90.103 Radiolocation Service.**

\* \* \* \* \*

(b) \* \* \*

**RADIOLOCATION SERVICE FREQUENCY TABLE**

Frequency or band	Class of stations	Limitations
* * *	* * *	* * *
78,000-81,000	.....do	30

(c) \* \* \*

(30) Eligibility is restricted to airport authorities, or entities approved by the Federal Aviation Administration. Use is limited to foreign object debris detection.

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